

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Citizens Utility Board)	NSD File No. L-01-161
Petition for Expedited Permanent)	CC Docket No. 96-98
Waiver of 47 CFR Section 52.19(c)(3)(ii))	
_____)	

**COMMENTS OF AT&T WIRELESS SERVICES, INC. TO CITIZENS UTILITY
BOARD PETITION**

Pursuant to the Public Notice released December 13, 2001,¹ AT&T Wireless Services, Inc. (“AWS”) hereby submits these comments opposing the Illinois Citizens Utility Board (“CUB”) Petition for Expedited Permanent Waiver of 47 C.F.R. § 52.19(c)(3)(ii). The Commission should deny this request for waiver, given that there is no showing of “good cause” as required by 47 C.F.R. § 1.3 to grant a permanent waiver of the 10-digit dialing requirement.

**I. CUB HAS FAILED TO DEMONSTRATE GOOD CAUSE WARRANTING
WAIVER**

CUB’s petition for permanent waiver of the 10-digit dialing requirement in the 847 and 224 numbering plan areas (“NPAs” or area codes) fails to meet the high hurdle required to show “good cause” for waiver, and fails to demonstrate that there are “special circumstances” warranting deviation from the general rule and that deviation will serve the public interest.² Instead, CUB’s petition merely rehashes arguments that have already been rejected by the Commission. Moreover, waiver would be against the public interest because lack of 10-digit dialing has substantial anti-competitive effects.

¹ Public Notice, “Common Carrier Bureau Seeks Comment on the Amended Citizens Utility Board Petition for Expedited Permanent Waiver of 47 C.F.R. § 52.19(c)(3)(ii),” DA 01-2874 (rel. Dec. 13, 2001).

² The Commission’s rules permit waiver of its rules if “good cause therefor is shown.” 47 C.F.R. § 1.3. *Public Utility Commission of Texas Petition for Expedited Waiver of 47 CFR Section 52.19(c)(3)(ii) for Area Code Relief*, DA98-2141, NSD File No. L-98-105 (1998) (“*Texas Order*”) (granting temporary waiver of 10-digit dialing

As the Commission has noted in numerous orders, its primary goal of mandating 10-digit dialing for overlay areas was to prevent the anti-competitive effects of all-services overlays.³ Accordingly, the Commission has addressed and denied previous petitions for *permanent* waiver of this rule⁴ and instead, has only on limited occasions granted a temporary waiver of the 10-digit dialing requirement in order: (1) to allow sufficient time to modify networks to accommodate 10-digit dialing; (2) to allow time to educate customers regarding the changed dialing patterns; and/or (3) to accommodate conditions relating to geographic uniformity in the areas affected.⁵

In fact, the Illinois Commerce Commission (“ICC”) has already been granted two temporary waivers of the 10-digit dialing rule since 1999⁶ for two of the reasons noted above: to allow the ICC to educate customers as to the change in dialing patterns and to ensure geographic

requirement) at para. 6.

³ See 47 CFR 52.19(c)(3)(ii) (no area code overlay may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code); *Matters of Local Competition Provisions of the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Area Code Relief Plan for Dallas and Houston, ordered by the Public Utility Commission of Texas, Administration of the North American Numbering Plan, Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois*, FCC 96-333, Second Report and Order and Memorandum Opinion and Order at para. 287 (rel. Aug. 8, 1996) (“*Local Competition Second Report and Order*”). Such disparity occurs when overlays are implemented absent mandatory 10-digit dialing because all existing telephone users in the old area code would only dial 7-digits to call others in the old area code while users in the new overlay code would have to dial 10 digits to reach customers in the old code. *Local Competition Second Report and Order* at para. 287.

⁴ See, e.g., *Pennsylvania Public Utility Commission Petition for Expedited Waiver of 47 C.F.R. Section 52.19 for Area Code 412 Relief*, DA 97-675, CC Docket No.96-98, Order (1997) (“*Pennsylvania Order*”) (denying permanent waiver); *New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(I)*, DA98-1434, NSD File No. L-98-03, Order (1998) (“*New York Order*”) (denying permanent waiver but granting temporary waiver).

⁵ See *Illinois Commerce Commission Petition for Expedited Temporary Waiver of 47 CFR Section 52.19(c)(3)(ii)*, DA00-477, NSD File No. L-99-65, Order (2000) (“*ICC Order*”) (granting temporary waiver); see also *ICC Order* at para. 3, citing *Pennsylvania Order*, *New York Order*, and *Texas Order*.

⁶ *ICC Order*; See Letter from Dorothy Attwood, Common Carrier Bureau, to Richard Mathias, Chairman, ICC dated April 6, 2001, DA 01-628 (“*Second ICC Extension*”) (granting extension of temporary waiver for 9 months until January 7, 2002).

uniformity in the affected areas.⁷ These circumstances justifying a waiver no longer exist⁸ and significantly, the ICC has not sought a further waiver. Instead, this time it is CUB seeking a waiver – a permanent one – asserting that: (1) the Commission lacks authority to mandate such requirements; (2) that no dialing disparity results without 10-digit dialing; and (3) that the inconvenience to consumers of 10-digit dialing is too great. As discussed below, such arguments fail to illustrate “special circumstances” required to show good cause for a waiver and should be rejected.⁹

A. CUB Incorrectly Asserts that the FCC May Not Pre-empt State Jurisdiction over 10-Digit Dialing.

CUB argues that the Commission may not pre-empt state jurisdiction over 10-digit dialing without clear congressional intent. In making this argument, CUB conveniently ignores Section 251(e)(1) of Telecommunications Act of 1996 (“Act”) and the administrative and court decisions interpreting it. Section 251 could not more plainly and unequivocally express Congress’ intent to provide the Commission with exclusive authority over numbering matters: the Commission has “*exclusive* jurisdiction over those portions of the North American Numbering Plan that pertain to the United States,” and authority to delegate “all or any portion of such jurisdiction” to states or other entities.¹⁰ The Commission has previously concluded in a

⁷ *ICC Order* at para. 13. Modifications to telecommunications networks was not a basis for the temporary waiver in Illinois, as the switches in the region already permitted 10-digit dialing. *Id.* at para. 12.

⁸ Overlays have now been implemented in all the area codes in which the ICC has ordered them. *See* CUB petition at 4. The Commission noted in its second extension of April 2001, that an additional extension of 9 months for the ICC to implement 10-digit dialing “should be *more than sufficient time* for Petitioner to educate consumers.” *Second ICC Extension*, at 2. Despite this, CUB generally asserts without support that there are still significant problems regarding consumer education and technical implementation.

⁹ In fact, the Commission has rejected similar arguments raised previously by the New York and Pennsylvania commissions. *See, e.g., New York Order* and *Pennsylvania Order*. The Second Circuit recently affirmed the FCC’s denial of permanent waiver to the New York commission. *See People of State of New York, Public Service Commission of the State of New York v. FCC*, 267 F.3d 91(2nd Cir. 2001) (“*New York v. FCC*”).

¹⁰ 47 USC 251(e); *see ICC Order* at para. 2.

number of cases that Section 251(e)(1) plainly gives it authority to require 10-digit dialing.¹¹

The Second Circuit agreed, recently affirming that the “FCC’s assertion of jurisdiction over local dialing patterns is reasonable,” given the Act’s grant of authority to the FCC to regulate local telecommunications markets, the Act’s goal of promoting competition, and the 10-digit dialing rule’s purpose of ensuring competition.¹²

CUB’s additional assertion that the Commission should delegate unconditional authority to state commissions to implement area code relief is equally unfounded.¹³ The conditions the Commission has placed on states’ adoption of area code relief are entirely permissible and help advance the Commission’s goals of promoting competition.¹⁴ In response to similar arguments by the New York commission, the Second Circuit found that the only reason that the state commission “has *any* authority to implement overlay area codes in New York City is because the FCC exercised its authority under § 251(e) to delegate to State commissions the power to implement area code relief,” and “the imposition of 10-digit dialing is a valid condition on this delegation.”¹⁵

¹¹ See e.g., *New York Order*, *Pennsylvania Order*, *ICC Order*. See also *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, *Area Code Relief Plan for Dallas and Houston*, *Ordered by the Public Utility Commission of Texas*, *Administration of the North American Numbering Plan*, *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech*, *Petition for Declaratory Ruling Regarding Area Code Relief Plan for Area Codes 508 and 617*, filed by the Massachusetts Department of Public Utilities, *New York Department of Public Service Petition for Expedited Waiver of 47 C.F.R. Section 52.19(c)(3)(ii)*, FCC 99-243, Third Order on Reconsideration of Second Report and Order and Memorandum Opinion and Order (1999) (“*Local Competition Third Report and Order*”) at paras. 35-37.

¹² The Second Circuit noted that it is not unreasonable to conclude that Congress’ use of the term “North American Numbering Plan” encompasses more than the Bell Operating Companies’ use of the term. *New York v. FCC*, 267 F.3d at 106.

¹³ Consistent with its *exclusive* jurisdiction over numbering matters, the Commission has reserved the right to delegate authority over numbering matters “subject to [the Commission’s] numbering administration guidelines.” *Local Competition Second Report and Order* at para. 267.

¹⁴ *ICC Order* at para. 7; see also *Local Competition Second Report and Order*, at para. 285.

¹⁵ *New York v. FCC*, 267 F.3d at 107.

B. 10-Digit Dialing is Required to Ensure Competition

Similarly, although CUB contends that the absence of 10-digit dialing does not result in dialing disparity,¹⁶ such argument ignores that without 10-digit dialing, a new carrier's customer in a new overlay area code must dial 10-digits in more instances than the customer in the old area code.¹⁷ As the Commission has recognized, 10-digit dialing ensures, "that competition is not deterred as a result of dialing disparity."¹⁸ The 10-digit dialing requirement is also consistent with the Commission's goals that numbering relief promote competitive telecommunications entry and not or unduly favor or disadvantage any specific technology, industry segment or group of customers.¹⁹

Moreover, CUB incorrectly claims that local number portability ("LNP") will alleviate dialing disparity because there are sufficient numbers in the 847 area code and wireless carriers will soon become LNP-capable.²⁰ As an initial matter, not all carriers are LNP capable today and some will never become LNP capable (e.g., paging providers, rural providers). LNP will not reduce the level of dialing disparity for these carriers or their customers. Moreover, even with LNP capability, there are still a substantial number of customers that seek new numbers (e.g., to add additional telephone lines or to obtain a new telephone outside of their former rate center). New entrants will likely already be at a disadvantage serving these customers since they have access to fewer numbers in the old code than the incumbent. Such competitive disadvantage

¹⁶ CUB petition at 10-15.

¹⁷ See *Local Competition Third Report and Order* at para. 35.

¹⁸ See *New York Order*, at para. 6, DA98-1434. In fact, the Commission previously held that even the existence of competition does not warrant a waiver from the 10-digit dialing requirement. *New York Order* at para. 7.

¹⁹ *Ameritech Order* at para. 18; *Local Competition Second Report and Order* at paras. 281-287; *Matter of Numbering Resource Optimization*, FCC 00-429, CC Dockets No.99-200 and 96-98, Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking (2000) ("*Second NRO Order*") at para. 60.

²⁰ CUB petition at 12.

would only be exacerbated without the 10-digit dialing requirement. For these reasons, the Commission has expressly rejected similar arguments made by other petitioners noting that “number portability does not eliminate the competitive inequality of dialing disparities caused by an area code overlay.”²¹

C. The Benefits of 10 Digit Dialing Outweigh the Costs

Finally, CUB’s argument that 10-digit dialing imposes unnecessary costs and inconvenience is unfounded as well as moot. First, there is no support for CUB’s assertion that 10-digit dialing is costly to implement. The Illinois Commerce Commission (“ICC”) has never contended that it would be expensive to implement 10-digit dialing. Further, the most significant costs associated with the implementation of 10-digit dialing, the costs of modifying the telephone switches to accept 10-and block 7-digit dialing, have already been incurred by the carriers, who have not objected to the cost burden.²² Second, it is not unduly burdensome for a customer to dial an extra three digits. Given the multiple NPAs in the Chicago metropolitan area, many customers must already dial 10 digits to place local calls to neighboring NPAs. Moreover, the Commission has previously rejected the “customer confusion” argument as grounds for a waiver, noting that implementation of a new area code (whether overlay or split) is always initially confusing.²³ Indeed, parties have previously observed that consumer discomfort with 10-digit

²¹ *New York Order* at para. 8. Moreover, CUB’s claim that Illinois fully complies with the Commission’s non-discriminatory number assignment rules is unpersuasive – the Commission has noted that state compliance with federal requirements “does not constitute a special circumstance” justifying waiver. *New York Order* at para. 8.

²² *See ICC Order* at para. 12. Moreover, CUB erroneously argues that the FCC’s decision not to require nationwide 10-digit dialing demonstrates that the costs of 10-digit dialing outweigh the benefits. CUB petition at 15. In fact, the Commission implicitly undertook a cost-benefit analysis in determining that mandatory 10-digit dialing should be adopted for areas in which overlays have been implemented. As discussed above, the Commission fully examined the negative effects of overlays without 10-digit dialing, and determined that the costs of such a scenario outweigh the benefits of ensuring competitive neutrality or promoting competitive entry. *See Pennsylvania Order*, at para. 26 (“customers ultimately would pay the price for the lack of competition in the telecommunications marketplace”).

²³ *See Pennsylvania Order* at para. 23; *Matter of Illinois Commerce Commission Petition for Expedited Temporary Waiver*, NSD File No.L-99-65, AT&T reply comments (1999) at 3, n.8, *citing* Testimony of Ameritech (noting that 7-digit dialing could actually increase customer confusion due to the multiple area codes in the Chicago area).

dialing is temporary, without the attendant significant inconvenience that CUB contends would exist.²⁴

II. CONCLUSION

In summary, there are no special circumstances warranting waiver and indeed, granting CUB's petition would be against the public interest. For the foregoing reasons, AWS respectfully requests that the Commission deny CUB's petition for permanent waiver of the 10-digit dialing requirements in Illinois.

Respectfully submitted,

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²⁴ *ICC Order* at para. 8, *citing* ALTS comments at 3; *see also* AT&T reply comments (NSD 99-65) at 2, n.6.